

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on February 24, 2003 at 3:35 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 449, 2/21/2003; SJ 21,
2/19/2003; SB 451, 2/21/2003
Executive Action: SJ 21

HEARING ON SB 449

Sponsor: SEN. MIKE COONEY, SD 26, Helena

Proponents: JoAnn Dotson, Department of Public Health and Human Services (DPHHS)
Mike Henderson, Lewis & Clark County Health Department
Lora Wier, Public Health Nurse
Steve Yeakel, Montana Council for Maternal Child Health, Montana Child Care Resources Referral Network
Sami Butler, Montana Nurses Association (MNA)
Mike Barrett, Poet

Opponents: REP. JONATHON WINDY BOY, HD 92, Box Elder
Toni Plummer-Alvernez, Self

Opening Statement by Sponsor:

SEN. MIKE COONEY, SD 26, Helena, said SB 449 amended the Fetal Infant Child Mortality Review Prevention Act. He said this was important because the death of an infant during the first year of life or any childhood death was a central event that served as an indicator of community, social, and economic well being and health. Montana's Fetal Infant and Child Mortality Review was a statewide effort to reduce preventable fetal infant and child deaths by identifying risk factors associated with the death and making recommendations to prevent future deaths based on a lesson learned from the reviews of those deaths. **EXHIBIT (phs41a01)** The process was originally authorized in a statute in 1997. **SEN. COONEY** said the FICMR process brought together a multi-disciplinary team of community members to review and identify fetal infant and child deaths. The community level team examined the case summary, identified issues, and made recommendations for community or state wide change if appropriate. **EXHIBIT (phs41a02)** Small counties would need to partner with larger counties and/or tribal organizations to form cooperative review teams. DPHHS legal staff recommended changing the particular legislation to account for this change. SB 449 provided these needed changes. He said the bill was not asking for names or information to be provided where it could be used in prosecution. The team was interested in getting information about the deaths to examine the information and then come up with a strategy on how to address appropriate measures as well as find solutions to help prevent future deaths.

Proponents' Testimony:

JoAnn Dotson, DPHHS, stated she was the Chief of the Family and Community Health Bureau. The bureau oversaw the state level activities of the Fetal Child Mortality Review and supported the local schools in their efforts. The purpose for the Montana State Child Mortality review was prevention. She referred to the review handed out earlier. There were many examples that described the demographics, the number of deaths reviewed, and it identified what had already been done at local and state levels to prevent death and identified areas of recommendations that could be moved forward to prevent those types of deaths. Some causes of death included SIDS and did families know whether babies should sleep on their backs instead of their stomachs. That was the old way. **Ms. Dotson** said it was a causative factor of SIDS. Drowning was another. One recommendation was that there needed to be gates around some pools in some smaller communities. That was done in some areas. These were at a community level and the actions were primarily at the community level. She said this was in the best interest of the children. There were 17 teams in 1997 and there were now 27 teams reviewing multiple counties hoped for 95%, preferably 100%, but recognized that would never happen in the review of deaths. Some deaths could be prevented and some could have been avoided. The goal was to help communities.

Mike Henderson, Lewis & Clark County Health Department, stated he was the administrator of Community Health Services for the Lewis and Clark City County Health Department. He said Lewis & Clark County had a team in place to review infant, child and fetal death for years since 1997. Sixty-one deaths had been reviewed and had determined that 23% of these could have been prevented. Specific activities were generated designed to prevent similar deaths from happening in the future. A fetal infant child death review worked as a function of public health at the local level. Multiple agencies and disciplines were coming to meetings, to decide what action could be taken from these reviews to prevent future death. Public Health is about prevention. SB 449 was something that could be done to strengthen public health and it had no price tag attached. He urged support of SB 449.

Lora Wier, Teton County Public Health Nurse, said she had been a public health nurse for 24 years and supported SB 449. Her community had 6900 residents. Since the mortality review committee and the law established, any infant or child deaths needed to be reviewed. If there was an infant or child death, she would have to organize the review team of the different

disciplines required. **Ms. Wier** asked if her county could use Cascade County's review team, who was right next door. She said that using their team would be practical because they have been established since the law had been put into place. Cascade County had the experience and education. She urged for support of SB 449.

Steve Yeakel, Montana Council for Maternal Child Health, Montana Child Care Resources Referral Network, said they stood in strong support of SB 449. **Mr. Yeakel** said that seven years ago he talked with then **REP. DUANE GRIMES** about how important he thought the legislation was. He said that as this legislation was thought through, there would be some things perceived as controversial. It was a policy decision that the State made where all the questions could be asked about the bill. The recurring question left with was why do babies die? He said it was a tough question to answer. **Mr. Yeakel** said society could better themselves quickly with just a little education. This was already going on in several counties with great success.

Sami Butler, Montana Nurses Association (MNA), said the association supported SB 449 because many of these deaths were preventable. With a collaboration and support of tribal and state efforts, the deaths of children and infants could be prevented.

Mike Barrett, Poet, stated he was also a former council member and an extensive letter writer to the State and Federal Government. He thought the problem was still being confronted was how effectively to prevent tragedies.

Opponents' Testimony:

REP. JONATHON WINDY BOY, HD 92, Box Elder, said he was brought forward as an opponent on February 7 to LC1851, but could see it was now SB 449. He said that for the record he had the resolution and opposition from the Chippewa Cree Tribe.

EXHIBIT (phs41a03) He said that eight members of his council were there. **REP. WINDY BOY** said he had some concerns with it. He looked at the existing law and looked at the bill being proposed. He said many things had been happening in Indian country and had noticed within the last couple years, especially with the last legislation, and saw much legislation passed through both Houses. The Senate signed what presently exists into law without the agreements or consultations of the tribes. One example of that was currently going on with DPHHS who was in a joint study with the State of Montana, North Dakota, South Dakota and Minnesota. They were doing a study of fetal alcohol syndrome. He said the study was probably a good thing and would uncover many things

that were happening. He disagreed with the process because nothing had been brought to him as a tribal leader and as a representative of his people. There was part of Article 1 in the Constitution including the agreement and declaration of all lands owned or housed by any Indian or Indian Tribe would remain under the absolute jurisdiction and control of the Congress that the United States. It would continue in full force until revoked by the consent of the United States and the people of Montana. He understood that was still in place and that was what he swore on his oath, January 6, 2003 to do. The tribal elders pointed out that for centuries, back to point of the creation of mankind and the universe, the Supreme Being had given life and had put down unwritten laws of the universe, unwritten laws for us to abide by. One of those things specifically related to this. **REP. WINDY BOY** said the day life began was directed by the Supreme Being. It was the same with the day lives were called home. The Supreme Being was the only one that could determine. He said his own personal experience with this piece of legislation when his daughter's mother had a miscarriage. Because of his cultural beliefs and the way of his people that no matter what stage that a life ends, respect was given. Life was not theirs. It was loaned. He said that to this day, he did not know what happened to the fetus. He gave the baby a decent burial. He said this happened every day and by placing man-made laws over unwritten laws in the universe was a sin in his culture. He asked that the bill be tabled.

Toni Plummer-Alvernez, Self, said she was not sure if she was a true opponent, but would tell her story anyway. She said she worked for the tribes to exempt public policy and that had to do with the health and well being of the American Indian People and those of Montana. She said she had a problem with parts of the legislation, particularly the part where the parents were not notified of their case being reviewed and that was a violation of privacy. It was a violation and disrespectful to the death of their child and no family should endure that. It was a problem when tribal governments were not informed and that resolution should have been brought forth in writing from the very beginning. **Ms. Plummer-Alvernez** said the tribal governments and the individuals in the community deserved to know what was happening. She said that tribal communities were powerless in one sense because most of the children were born off the reservation. They could not have a voice in how that information was going to be relayed if they were not informed. She said from her work with the tribes, when the legislation was discussed, they did not understand the legislation. Their public health systems understood as well as the Indian Health Service Systems who were trained medical people. It was their job to know, but the

presiding officials of the communities did not. She had these concerns but was there to speak as a woman and not just a representative. She said she had consulted with her husband before coming to testify and he agreed that she should tell her story and asked that her time be respected. In 1990 she had her first child and got very ill afterwards. Throughout her life from 1999 to the last birth of her child, she had been pregnant 16 times and only three live births. She recently found out she had a very rare blood disease that she did not know about back then. She assumed and was under the impression the doctors did not know either. Therefore, the subsequent miscarriages. In August of 2002 she thought she could not have children because that was what the medical people told her. She said she was protective and felt very sad because she and her husband wanted to have a big family. Her 8-year-old daughter barely lived when she went into pre-term labor with her. She was being cared for in another community and happened to be in an urban study when they rushed her to the hospital. Blood work was done and they called all her relatives and her doctor for an emergency meeting. A decision needed to be made. It was either she or her child because of the disease. She found out she had the disease since 1990. **Ms.**

Plummer-Alvernez said she fought hard for her daughter's survival. In August of 2002, she got sick again and was put into a hospital in another community. When she was admitted, she did not have any white blood cells and sick enough that they wanted this information put in her medical records. She had never gathered her medical records before, but called all the hospitals and collected her records. She was told then that she had a disease and was told she should look at her records. She found out then that she had been studied since 1990. It had already been determined when in the pregnancy she would lose her children. There were medical reports from universities all over the country examining her placenta and her fetuses. The cause of death was already determined as well, but no one ever told her. It was known in 1990 that she could not carry children full term because of the disease. All of her pregnancies had been studied including the live births and the losses, all of which was done without her knowledge. She said that she and her husband had felt violated. Both wanted children badly and she wondered how it all would have played out if she had been informed as well as asked to be studied. Currently there was not a cure for her disease.

{Tape: 1; Side: A}

All she knew was how long she could carry children before the blood clots in her placenta would kill her baby. She repeated that she was not sure if she opposed the bill, but stated that

babies should not be studied without informing the parents. She said policies should not be passed without letting people know what that policy did. She said no one took care of her and her family. She said it was a tough decision and it was not comfortable, but there needed to be strong amendments to address some of her concerns. She thought it safe to assume there were others like her who were not informed and needed to be. She said she was speaking in opposition of her tribe who supported her. This was difficult for her, but felt it important to share her story so that an informed decision could be made on SB 449.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. TRUDI SCHMIDT, SD 21, Great Falls asked **Ms. Plummer-Alvernez** what types of amendments she would like to see put in. **Ms.**

Plummer-Alvernez said it would have to be amended so that families were informed that their children were going to be studied and that the case was going to be heard. She wanted the application form to state clearly that if a pregnancy ended that there may be a prevention study done and that the parents had the option of signing. If it were handled that way, there might be more support in research done on the loss of their child. She said the other issue that came from the view of tribal government was a resolution had to be done for every tribe saying they were knowledgeable and aware of the particular research. Some tribal members might support the efforts. There had to be some control over the data that generated from the study's outcome, so that they too could solve their problems in their communities.

SEN. SCHMIDT asked **Ms. Plummer-Alvernez** who she was referring in her testimony when saying "they." **Ms. Plummer-Alvernez** said she attended the three hospitals.

SEN. JOHN BOHLINGER, SD 7, Billings asked **Ms. Plummer-Alvernez** if she would help structure an amendment to help meet the tribal concerns and help make available information that hopefully would prevent death. She said yes.

SEN. ROBERT DEPRATU, SD 40, Whitefish asked what the protocol was and was there a difference in how long a gestation period had taken place. **Ms. Dotson** said she was an old prenatal nurse and used to care for many babies and fetuses that died. She did not know about the management of the body that was now in code, but knew there was a Montana Code.

SEN. DEPRATU asked about how a placenta could be shipped all

around the country without a person's knowledge. **Ms. Dotson** said she could not explain that.

SEN. BRENT CROMLEY, SD 9, Billings asked what was the main thrust of changes to be made. **SEN. COONEY** referred the question to **Ms. Dotson**. **Ms. Dotson** said the purpose was to allow multi-county and tribal county partnerships to happen. There were four tribes that were working with counties and had multiple counties that wanted to work in this together. It was not until last year that legal advice said with the way the language was written, there should not be anyone outside the county jurisdiction sitting on each others team. That had not been the understanding because Public Health tended to work together always. **John Melcher** of the Attorney General's office had worked on the original legislation in 1997 and said that was the way it was originally intended with free standing committees in each county. In the smaller counties it was not the way it was going to work. The smaller counties needed to work with other counties to allow for an exchange of information and to clarify how it would be handled. That was really the emphasis for the change in the legislation.

SEN. CROMLEY asked if the principal purpose was to make up the team. **Ms. Dotson** said yes.

SEN. CROMLEY asked how many were anticipated on a team. **Ms. Dotson** said the team was outlined in the legislation and depending on the various teams, the size ranged from five or six people up to 10 or 11, depending on the various members. It depended on the community and what they put together in multi county areas.

SEN. CROMLEY said he noticed in Section 3 that it said records would not be subject to subpoena and asked what the reason for the change was. **Ms. Dotson** said that was additional information and anything beyond that was omitted based on legal advice and were told that by making that statement additional data would not be needed.

SEN. JERRY O'NEIL, SD 42, Columbia Falls asked if current law gave the state any jurisdiction over the Indian tribes. **Ms. Dotson** said tribe areas were sovereign nations and had their own government structure. She said **Ms. Alvernez's** suggestion to go to the tribes was something the two had already talked about but would have no problem being sure that presentations were made. She saw that under the legislation as it already existed, the participants on review teams were supposed to be appointed by tribal government and needed to assure it happened. She said

that as far as a tribe being able to opt out, that would occur on the tribal lands and would not be reviewed.

SEN. SCHMIDT asked which tribes were involved. **Ms. Dotson** said the Blackfoot, Fort Peck, Northern Cheyenne, and Crow.

SEN. BOHLINGER said some very persuasive testimony was given by **Ms. Alvernez** who described the spiritual concern of our Native American population. He wondered if the concerns could be set aside if an amendment were structured so that the person who had lost a child could be asked if they wanted to submit the fetus to a study but also provide for a burial, understanding that there is a soul and as a human, there has to be some respect shown for that. He asked **REP. WINDY BOY** if he would help study an amendment like that to make a study available to address the infant mortality problem. **REP. WINDY BOY** said no. He said he stated his reasons and was not going to compromise his belief system. He knew there were some tribes that did support the legislation, but he did not.

SEN. O'NEIL asked if legislation gave the review teams any jurisdiction over the fetus. **Ms. Dotson** said no. These are all after the death occurred, the fetus would be dealt with at the hospital facility or at the emergency medical services wherever the death and the body occurred. This would be much faster than that.

SEN. O'NEIL asked if the fetus would be treated any differently under this law than if it did not exist. **Ms. Dotson** said no.

SEN. SCHMIDT asked **REP. WINDY BOY** if he were comfortable with studying child mortality rates, rather than fetuses. **REP. WINDY BOY** said no, it did not matter what stage of the life it was, it was not his place to judge or to decide of when and how death occurred. That is up to the supreme being and that is the way he had been taught and he was going to stand by that.

SEN. BOHLINGER said he was a person of faith and shared **Ms. Alvernez'** concerns, but also saw the intent of the legislation. He saw that it could provide valuable information and prevent future deaths. He hoped for an amendment to be structured that would meet with her approval. **Ms. Alvernez** said she could only speak for herself and wanted to contribute to it. She wanted to make sure it was done in a respectful way because of the cultural ties to the burial ceremony of children.

Closing by Sponsor:

SEN. COONEY said he was glad that **REP. WINDY BOY** and **Ms. Alvernez** testified. He clarified what the bill was really about was taking the information provided from medical care givers, hospitals, and coroners, which was kept confidential. He said the names of the parents and the child were never known, only the specifics of the incident. The information was compiled and then the review teams sat and looked at this information to see if there was a pattern that could be identified. These review teams then tried to figure out ways to prevent these types of deaths recurring. He was surprised that there was discussion about the mistreatment of the remains. The remains were not being dealt with. The remains had been dealt with by the family long before the information got to the review team. **SEN. COONEY** said he would be happy to work out some amendments that would help the legislation move forward.

{Tape: 1; Side: B}

If the tribes process was that a resolution had to come from the tribe, then they will work with the tribal entities to get the appropriate resolutions. There were some who did not require resolutions. The bottom line was to gather information that could be used at the local level to prevent deaths of children and infants. He agreed that it needed to be done in a way that was respectful of everyone and their lives.

HEARING ON SJ 21

Sponsor: **SEN. VICKI COCCHIARELLA, SD 32, Missoula**

Proponents: **Linda Fellingner, DPHHS**
Sandy Bailey, Montana State University
Gene Lewwer, Rocky Mountain Development Council

Opponents: **None.**

Opening Statement by Sponsor:

SEN. VICKI COCCHIARELLA, SD 32, Missoula, said SJ 21 came from the Governors Council on Children and Families. She said that 72% of Montana's children less than six years of age lived with two employed parents or one employed single head of household and the idea of this resolution was to support a study on how we could increase child care services in the State of Montana. A survey was done of eight Montana communities: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Miles City and Missoula. Healthcare services and retail businesses were the two biggest sector employers for women in the State of Montana. Those

employees of those businesses had all kinds of arrangements for day care, whether it was a family member or licensed facility. The kinds of care that they identified as hard to get were evening and weekends, back up an emergency, sick child care, infant and toddler care, school age care, special needs care. They found the cost to businesses in the state astounding. Nationally, 41% of all unscheduled absentees in business were due to family issues and personal needs. Thirty to seventy percent of parents had missed work this past year due to child care needs. In Helena, an office of 125 employees, 20% of the absences were caused by the child care needs with the cost of \$6500 a year. In Great Falls retail business with 450 employees, 5% of the absenteeism was caused by child care needs to the cost of that business of \$18,200 per year. A business interviewed in Butte was called family friendly, in other words they had developed some criteria for their employees that allowed them to have flexible schedules and other things. They reduced their turnover, which was caused by lack of child care from an average of 135% to 33%. **SEN. COCCHIARELLA** said that when you looked at child care, you should not just think of the mom who was going to work. She said to think about the consequences in all of our lives when there was not quality child care, whether it was the social cost to the state for the lack of that child care, or the cost to businesses and the economy in Montana. She said it was a serious concern and a serious issue and the purpose of this resolution was to study what could be done in all aspects of the state to increase child care and decrease those social and economic costs that Montana faces for not having that child care.

Proponents' Testimony:

Linda Fellingner, Chief of the Early Childhood Services Bureau, and Human Community Services Division, Department of Public Health and Human Services said it was in this bureau where the child care and development law grant program was managed. In the program, child care costs were paid for low income families who were participating in activities in the welfare program so they could become employed. She said they supported the bill and she was there to answer any questions.

Sandy Bailey, Family and Human Development Specialist, Montana State University Extension, said she conducted research and did programming with children and families across the State. She said we had come a long way in the last 20 years and she hoped that the limited resources of the State would not set us back to where we were in 1982. When she was a first time mother and had gone back to work, it was not a choice for her and her husband. She looked for a child care provider and found one person in the

town of Bozeman who would take an infant. Instead of her interviewing the child care provider, the child care provider interviewed her. This was so the child care provider could determine whether she wanted to take her child in or not. In the end, the child care provider did not because **Ms. Bailey's** baby was only three months old. **Ms. Bailey** said there were still limited types of child care available out there, but infant care, sick care, part time child care, and care for disabled children were still very limited. We were making progress and much of that was due in part to the child care resource and referral network. The network started with small offices 20 years ago. She said she was involved with them and that now they provided referrals for parents, trained child care providers, managed state child care systems for eligible families, and worked with businesses that have difficulties in attracting employees due to child care needs. There is also a registry for trainers so we know that child care providers are trained by qualified individuals. There is the STAR program to avoid and recognize quality child care programs and requirements for child care providers to have continued annual training. All of this had been great. We could not slide back. There was progress made in helping families on limited income for child care. Until September 1, 2002, families with limited resources up to 150% of poverty level could find help in paying for child care. Recently there was 693 in Montana on a waiting list because the cut backs had provided waiting lists for the service. **Ms. Bailey** said some parents might be forced to quit their jobs and fall back into the welfare system or severe poverty. She said we could not afford to slide backwards. Child care was essential for Montana's economy. There could not be an adequate work force without it. The resolution asked that DPHHS work with the network of child care resource and referral programs across the state to increase the availability of child care. To address the situation adequately, we would need to draw from federal funds. She said it would be a start.

Gene Lewwer, Rocky Mountain Development Council, said they were a child care service and a Head Start service. He said the council supported the resolution. He said child care was critically important and small changes in the large amount of money spent on it. Small changes in the eligibility could be very important about how it worked for people. He said a study would make sense to look at how eligibility rules could be adjusted to stabilize access to services for fragile families.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

Senator Cocchiarella closed.

EXECUTIVE ACTION ON SJ 21

Motion/Vote: SEN. DEPRATU moved that SJ 21 DO PASS. Motion carried 8-0.

HEARING ON SB 451

Sponsor: SEN. JOHN ESP, SD 13, Big Timber

Proponents: Dr. Gary Mihelish

Opponents: Joe Mazurek, Attorney, Protect Montana Kids
Vernon Bertelsen, Montana Senior Citizen Association
Christine Deveny, Protect Montana Kids
Lora Wier, Teton County Health Department
Richard Sargent, M.D
Linda Lee, Self
Kendra McHugh, Student
Terry Curey, Self
Pat Melby, MT Medical Association
Dick Paulsen, American Lung Association
Margaret Crennen, AARP
Sami Butler, Montana Nurses Association
Kristen Page Nei, American Cancer Society
Elizabeth Andrews, Representing Jeri Domme
Cliff Christian, American Heart Association

Opening Statement by Sponsor:

SEN. JOHN ESP, SD 13, Big Timber said SB 451 was simple. He passed out three items. One was a graph and summary for past year substance abuse among adults aged 18 or older with serious mental illness. **EXHIBIT(phs41a04)** The second handout was a graph and summary of serious mental illness based on age, race, and by serious mental illness. **EXHIBIT(phs41a05)** The last handout was of the Comprehensive Plan and Funding Recommendations for the Montana Tobacco Use Prevention Program for the 2004-2005 Biennium recommended by Protect Montana Kids Organization.

EXHIBIT (phs41a06) The purpose of the bill was to go back and ask the voters of Montana to give the legislature more flexibility in how they spent the tobacco settlement funds earmarked through the special revenue fund by Initiative 146. He said he would go through the bill in stages to explain the proposed changes. **SEN. ESP** said on Page 1, Lines 17,18,19, it stated that health care included community based mental health services and health care for Medicaid and Medicare eligible people with smoking related illnesses or tobacco related illnesses. In this section and later in the bill the serious mentally ill throughout the country had, as could be seen in the charts, a much higher smoking rate than any other segment of society. Their smoking prevailed at nearly 90% and it was well documented. He said there was a definite connection between mental illness and smoking and that was why the nexus between the two. In 1988, a study by Kessler found another 60% of those testing a new cessation drug suffered from major depression and the best guess was about 18% of we as a population as a whole had major depression. Nicotine had been shown to decrease the efface of some anti-psychotic drug so that the cost of treating patients who smoked was greater because they needed a higher dose of drugs to treat those things. A study by Staffler and Dave said mental illness increased the use of addictive drugs relative to the overall population. This increased by 20% for alcohol, 27% for cocaine, 86% for cigarettes. **SEN. ESP** said if a person had a history of mental illness compared with the overall population, odds were increased by 25% for alcohol, 69% for cocaine, and 94% for cigarettes. The antidotal evidence around Montana would suggest that there was a strong link between smoking and serious mental illness. When a call was made to the mental health center in Billings or the Rainbow House in Aspen, **SEN. ESP** asked how many severely mentally ill smoked. He said they would say most of them. That would be true in Helena, Missoula, and Kalispell. He said it was a hard line, often blurred. He asked how to help those who smoke if they were psychotic. Helping them quit smoking was tough. They had to be stabilized, medicated, and treated and then, there would be a chance to help them quit smoking. However, they had to be treated as a whole individual. He said that was the nexus between Mental Health and the tobacco settlement funds. Medicare and Medicaid treated people who were dying from smoking was easy to understand. He said we had a responsibility as a state to take care of those who were too poor to take care of themselves. He said we had been doing that for years and we were going to be doing it for many more years. There were a few changes on top of Page 2 and major changes in the advertising issues program that said focus must ". . .be on the benefits of cessation, detrimental effects of tobacco use, and the availability of programs." It said specifically, "advertising may not be used to

influence the political process." Farther down in the use of proceeds, it talked again about Mental Health and Medicaid eligible people. On Page 2, Lines 23 and 24, it talked about using the money in the Public school classes and had proposed to some of that in their program but would likely allocate money to public school classes directly. At the bottom of the page it said in new Section B, "The Department of Public Health and Human service will manage the tobacco prevention and mental health programs and shall adopt rules to implement the programs. In adopting rules, the department shall consider the health care needs of the people of Montana and the standards contained in Best Practices for Comprehensive Tobacco Control Programs--August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention as those standards apply specifically to Montana."

SEN. ESP said it was a significant change in policy and he thought it was important. He thought it important to tailor it to the needs of the people of Montana. He said that we needed to consider that sometimes boiler plate documents that are developed in other states did not always address the specific problems in Montana. The bottom of Page 2, Lines 25 through 29 talked about the board. **SEN. ESP** thought it would be good to have on the proposed advisory board County Commissioners, Hospital Board Members, Public Health Nurses, teachers, legislators so there would be a connection to the communities and to provide balance to the board. He said this did not change anything in the current biennium. He said it spoke to the next biennium and how we may or may not spend these funds then.

Proponents' Testimony:

Dr. Gary Mihelish, Dentist, President of the National Alliance for the Mentally Illness, said their only mission was to advocate for people who live with serious disabled mental illness. The average life expectancy of a Montana Citizen was roughly 76 to 78 years. The average life expectancy of a person who lived with a severe disabling mental illness in Montana was 52 to 55. This life span 20 years less was illness related, but it also related to the lifestyle. Many people with mental illness were addicted to tobacco. He said if he were to go to the mental health center on Jackson Street and drive down the north part, he would find numbers of people out in the cold smoking. Studies suggested that people with schizophrenia produced abnormal brain waves, particularly in the temporo-limbic region. Information processing, ability to damp normal stimuli or ignore repeated stimuli were a greater compromise. This was called "impaired gating." The brain could not "damp down" normal stimuli or ignore repeated stimuli. This was why we find people with mental

illness were usually secluded and away from noisy areas. They usually went to places where there were fewer people and fewer stimuli. **Dr. Mihelish** said part of the problem of gating was the deficiency of nicotinic receptors in the hippocampus versus the subfortigo part of the brain. Nicotine from cigarettes temporarily overrode this effect, switching on nicotinic receptors to provide a brief respite to a sensory overload. Studies showed that the ability to screen out background noise improved significantly right after smoking which explained why people with schizophrenia had three times the smoking rate of the general population. The atypical life that Clozaril evidently normalized gating in the brain, and that using this as atypical antipsychotic medication lead to significant decreases in smoking. Although over the last 10 years we found more about brain function related to mental illness, the services today for people with mental illness was less than they were 10 years ago. It had become more difficult for people with mental illness to obtain recovery in this state in our society. One significant reason that people with mental illness died was over use of tobacco. He said this was why he urged support of SB 451.

Opponents' Testimony:

Joe Mazurek, Attorney, Protect Montana Kids, said Protect Montana Kids was a coalition of three of the more prominent public health advocacy groups in Montana. The American Cancer Society, The American Heart Association and the American Lung Association.

Mr. Mazurek said they opposed SB 451 and urged for it to be tabled or opposed. He appeared for them before the Joint House Budget subcommittee to urge them to take what we think would have been a bold step to march in unison with your constituents. He encouraged them to follow the lead and the legal direction of 65% of Montana Voters when they passed Initiative 146 less than 120 days ago, to carry out the comprehensive tobacco use prevention program finally that could be sustained long term. He said that before the ink was dry on that initiative we were here proposing to change it already. An amount equal to 32% of the tobacco settlement proceeds received after June 30 go into a state special revenue account for the purposes listed in the bill and could see the old language and how it is proposed to be changed. It earmarked 32% for a comprehensive statewide tobacco prevention program based upon the best practices for a comprehensive tobacco prevention program established by the Centers for Disease Control. Seventy percent went into the CHIP account and Montana Comprehensive Health Association. The budget we recommended was at the bottom level for Montana based on these CDC practices. He likened it to a Ford Fiesta of a program as opposed to a Cadillac. He said we would get to our destination but we were

not going to get there in luxury. He recognized and acknowledged that the legislature could amend the laws and to make the necessary budget decisions and he was aware of the fiscal decisions being faced. He said that so far, the budget subcommittee on Human Services had allocated 2.7 million dollars per year plus \$500,000 dollars that the Governor had in her budget in annual tobacco expenditures. He said they received a CDC grant for \$800.

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Mr. Mazurek said it was gratifying to see that it was not the first time the voters had spoken on how to use the tobacco settlement dollars in the November 2002 election. In 2000 72% of the voters voted to put 40% of the money from the tobacco settlement into a trust for health care. He submitted that when the budget was cut the tobacco prevention budget was developed over a year long process; shortly after the settlement was entered with people participating all across this state. The result was that a tobacco prevention program was working toward CDC recommendation that began with 3.5 million dollars per year. Because that program was cut by 86%, rendering it essentially neutered, there was a wide spread group of people who came together and proposed Initiative 146. The voters passed this initiative again. He thought the 65% who voted for it were fully cognizant, and were aware of the fiscal problems that this state faced. He said the voters clearly stated that they wanted the tobacco settlement money used to address the greatest public health problem facing this state and they wanted to use the money from the tobacco settlement to do that. **Mr. Mazurek** said in his former public position the tobacco companies had threatened to sue states for failing to use the money for those purposes. It had been one of his frustrations since Montana reached its settlement to watch the tobacco settlement dollar be treated as a windfall to be spent on programs bearing no relationship to what the law suit was intended. The settlement was to give the people in Montana a fighting chance against the public health problem tobacco caused by establishing effective prevention and treatment programs. He said we failed to do that and the problem continued to get worse. He said the groups were not asking that other programs suffer at the prevention expenses. They requested the people's repeated demand on how the money was to be spent be respected. They supported an effort to fund mental health with the tax on tobacco. **Mr. Mazurek** said there were a couple of issues in the language of the bill that concerned him. He thought that Mental Health should not be funded at the expense of using tobacco settlement dollars to create a prevention program that would work for all citizens in the state. His concern was with

putting the entire mental health system under the tobacco settlement program. He acknowledged those with serious mental illness had problems with tobacco addiction. He said it did not make sense to fund the entire mental health system with tobacco settlement proceeds. There was health care for Medicaid eligible and Medicare eligible individuals with illnesses related to tobacco use. He said it sounded like we were using state settlement dollars to offset federal dollars currently being spent. He could understand a match for some purposes but this seemed to reverse that. Tobacco use resource center was a resource center for local communities and programs to get information. One concern he had was on Page 2, Line 17, where the language was to provide funds to help Medicaid and Medicare eligible individuals with illnesses related to tobacco use. He thought "assistance" was a broad term. **Mr. Mazurek** said there was a law suit pending that was being argued before the Supreme Court in which individual citizens were seeking to recover damages from the State out of the tobacco settlement money. The case was argued and had been tried in 15 states. It had not prevailed in any of them but it had not yet been decided. There was a core of individuals who have hired lawyers to go after the tobacco settlement money for their own use and this language may open the door to that. He encouraged another look at the definition of mental health because it was lengthy and it addressed the entire system. We are not talking about just treating individuals with mental health who may have tobacco related diseases. Since the tobacco settlement was made, the state received \$124 million of the \$935 million or so that we would receive over the next 25 years. That was about 13% of the money expected to be received. Montana still did not have a tobacco prevention program in place. Meanwhile, tobacco related health care costs continued to grow at more than 216 million dollars a year. In Montana, 2100 new smokers, mostly children, started every year. He thought it was important that we got on with the business with the public health crises, which was what tobacco did to society. He urged that the bill not be sent back to the voters. **Mr. Mazurek** believed that the voters had consistently spoken that this money belonged in tobacco use prevention and control.

Chris Deveny, American Lung Association of the Northern Rockies, read and submitted her written testimony. **EXHIBIT (phs41a07)** She also submitted the Montana Tobacco Use Prevention Program Progress Report 2001. **EXHIBIT (phs41a08)**

Vernon Bertelsen, Montana Senior Citizen Association, said he had worked for 30 years to protect the interest of its seniors. Montana Senior Citizen Association was in strong opposition to SB

451. He said he listened to the members and to other citizens of Montana and they said they were unhappy about the way the tobacco settlement money was being spent. The source of all the sickness and deaths and its associated costs could not be ignored. The solution to this problem had to be an effective tobacco prevention controlled program. They responded to that and helped bring Initiative 146 to the voters of Montana. The answer was overwhelming with an overwhelming vote for the initiative that would set up a prevention program proven successful in other states and was approved by the Center for Disease Control. They also included a program to help provide aid to more needy children under the Children's Health Insurance Program and to help fund Montana Comprehensive Health Association. While he served in the legislature, an initiative passed by the people of Montana was taken seriously. **EXHIBIT(phs41a09)** He was reminded of when **Francis Bardanouve** made a minor change in the application of an initiative he was almost tarred and feathered out of town. The people were really angry. He said he had worked in the political arena for many years but had never seen anything as arrogant and disrespectful of the direction of the voters of Montana as this legislation. People of Montana were becoming disenchanted by their ability to influence legislative action by their vote. He said if this were the process we sought to follow, perhaps the candidate who received the least votes should be installed in the office of State Representatives or Senator. Some years ago the legislature had the courage to place a surtax on our income tax, which was probably the fairest of our taxes. He urged rejection on the legislation that lied in the face of the wishes of the voters of Montana. He asked for a NO vote on SB 451.

Laura Wier, Teton County Public Health Nurse, read and submitted written testimony. **EXHIBIT(phs41a10)**

Dr. Richard Sargent, Family Practitioner, read and submitted written testimony. **EXHIBIT(phs41a11)** He also included tobacco references from previous testimonies he had given, **EXHIBIT(phs41a12)** accompanied with the information on a CD. **EXHIBIT(phs41a13)**

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Linda Lee, Self, read and submitted written testimony. **EXHIBIT(phs41a14)** She also submitted a Montana Tobacco Plan Summary. **EXHIBIT(phs41a15)**

Kendra McHugh, Student, said she was part of the community based prevention programs. She helped in passing the Helena Clean Indoor Air Ordinance and she worked with city and local businesses to provide butt cans for smokers to smoke outside. She also worked with youth in the community on tobacco prevention and the advocacy project. She felt the prevention programs were important because with sustained long term funding they worked. This year she had the opportunity to vote and felt that if she voted, maybe a small part of her voice might be heard. The tobacco companies spent \$30 million every year in Montana to persuade Montana youth to become addicted to their deadly products. Thirty-five percent of high school students use tobacco products. The \$350,000 that the prevention program had was not nearly enough to provide state wide prevention programs at adequate levels. With the 9.3 million we could begin the war against tobacco companies. She urged a NO vote against SB 451.

Terry Curey, Self, said he was a statistic of tobacco. He said this was an opportunity to make sure that future generations did not appear before the legislature in conditions similar to his. He said he was fortunate that he had insurance because when he looked at health care costs and the budget that we were faced within the State of Montana, his heart went out to all who had a tough decision to make. His personal cost per month averaged \$1783 a month in medications. This would be a cost to the state if he had been on Medicaid. He said that detracting from I-146 was senseless.

Pat Melby, Montana Medical Association, suggested that with the remote possibility that this bill would go to the public and the public would by remote possibility pass the legislation, that in the 2005 legislative session there would be a committee downstairs on the first floor that would be trying to figure out how much general fund money it could take out of the mental health budget and the Medicaid budget. In other words, whatever money was appropriated under this bill or directed under this bill for the mental health and Medicaid budget would be used to supplement the general fund in those programs. He recommended the bill be tabled.

Dick Paulsen, American Lung Association of the Northern Rockies, read and submitted written testimony. **EXHIBIT(phs41a16)**

Margaret Crennen, AARP, said she had written testimony for Pat Callbeck Harper, the Associate State Director for AARP. **EXHIBIT(phs41a17).** **Ms. Crennen** said AARP regretfully opposed **SEN. ESP's** efforts to address our state's mental health. AARP had worked throughout the session and would continue to work for

higher tobacco tax to fund the proposed programs as well as the many others in human services.

Sami Butler, Montana Nurses Association, read and submitted written testimony. **EXHIBIT**(phs41a18)

Kristen Page Nei, American Cancer Society, read and submitted written testimony. **EXHIBIT**(phs41a19)

Elizabeth Andrews read and submitted **Jeri Domme's** written testimony. **EXHIBIT**(phs41a20)

Cliff Christian, American Heart Association, said he had been trying to tell the legislature that we had a problem with tobacco. Tobacco in the state of Montana was costing us 216 million dollars a year. Currently, the combined use of tobacco in the state was only giving us 40 million dollars to pay back the 216 million dollars.

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Mr. Christian said a tobacco tax would be better, putting 15 cents on each pack of cigarettes. He said rather than pitting Mental Health against tobacco prevention, we needed to think outside the box. Adding a few cents to the price for a pack of cigarettes, a user fee, would help take care of mental health as well as tobacco prevention.

Jim Ahrens, Chairman of Lives for Healthy Montanans, said they were a group that helped in getting a trust fund established for putting back money and for the I-146 campaign on TV. He said in hind sight, several years later, he wished all the trust money had been taken away and put it into the trust so that we would not be having these discussions. He thought the people would do that if the vote were taken back to them. He said unfortunately **Governor Racicot** was a better negotiator than most and we started high. **Mr. Ahrens** said the people wanted 3/4 of the vote and **Governor Racicot** wanted 2/3 so we settled on this. He said there had been many nights when he thought all the money should have been put in a trust fund so that there would be no discussion. He said it could be used for mental health, prevention, or for a Medicaid match, which the hospitals would like to do and solve this once and for all. The alliance that represented more than 30 organizations worked hard on this and said he opposed the bill.

SEN. TRUDI SCHMIDT, SD 21, Great Falls said she was there to oppose the bill. She had sat on the Governor's Advisory Council

for tobacco use prevention with **SEN. DALE BERRY**, and a few others. The group had worked diligently in developing the Tobacco Use Prevention Program. She said it was a comprehensive, complete plan that was to be in place for a long period to deal with the problem. She said she was an advocate for the mentally ill and knew **Dr. Mihelish**. She said she had a family member that was mentally ill and committed suicide, so she knew how serious the problem was but did not believe SB 451 the way to go.

Questions from Committee Members and Responses:

SEN. BOHLINGER asked **Ms. Deveny** about some data she passed out. He was impressed with the results posted. He pointed out Oregon's consumption had decreased some. A 20% decrease in Arizona, 21% in Massachusetts, and 15% in Florida. Forty-seven percent of the high school students had quit smoking in California. Twenty-two percent were left that smoked and that dropped to 17%. These were impressive numbers. He asked if the decreases came about because of their tobacco cessation programs or because of the tax increase. **Ms. Deveny** said that one benefit of comprehensive tobacco prevention was that everything worked together so in some states they were not only funding tobacco prevention but they were also choosing a tobacco tax. Part of the tobacco prevention program included cessation. They were approaching it from many different angles. If they had not approached it from all those different angles and did only one area, they would not have seen those numbers.

SEN. BOHLINGER asked if she had any idea what percentage increase in cost of the tobacco tax was in those states. **Ms. Deveny** said she did not have that information with her but would be happy to get it and provide it to the committee.

SEN. BOHLINGER said the committee was going to take action on SB 451 tonight but still would like this as a point of reference.

SEN. BOHLINGER said that in the bill there was one thing that caught his attention, which was the language developed on Page 2, Lines 23-26, which was the State Wide Tobacco Prevention Program designed to prevent children from starting tobacco early in public school class. He asked what efforts were made in the cessation program to be developed that really took the program to the class room and asked if there was funding for teachers. **Mr. Mazurek** referred to **Ms. Deveny**. He said she was responsible for the entire state wide program. She was the person most familiar with that. **Ms. Deveny** said regarding the school program, a lot went on. The dollars went to stop the Public Instruction and they in turn awarded \$50,000 dollars of grants directly to the local school districts and those districts used those dollars to train

teachers in proven tobacco prevention programs that were class room based. There was \$500,000 state wide for school districts and then additionally they trained more than 332 Montana teachers in those curriculums so that they could implement them according to how they were developed and designed. When the program was cut, nearly 70% of Montana School Districts were setting up some kind of tobacco prevention program. They worked with each of the school districts to make sure they were understanding the importance of class instruction. This affected not only students and teachers but also parents and other people who came on campus.

SEN. BOHLINGER said that **Dr. Sargent** had mentioned in his testimony that not only did the program have to become one focused on educating students but it also had to become community based. **SEN. BOHLINGER** wanted to know what that meant and how was the will of the community changed. **Ms. Deveny** said it was not something that happened over night. When funding was given through county health departments for communities, like the Teton County Health Department, local groups were set up and the communities brought together the people to inform and educate them about the problems of tobacco. The community then needed to assess itself and find out what was going on about their kids using tobacco. Where sales were happening. Why was this a problem. Then the community worked with the schools. Some communities had initiated second hand smoke ordinances and so everybody was working together. She said that when the students start seeing anti-tobacco messages and anti-tobacco activities in the community, it reinforced what they are learning in the schools.

SEN. EMILY STONINGTON, SD 15, Bozeman mentioned the programs **Ms. Deveny** was running before they got slashed back to \$500,000 a year and asked if the budget affected the \$3.5 million a year. **Ms. Deveny** said yes, that it was \$3.5 million of settlement resources and an additional \$900,000 or so for the biennium from the Center for Disease Control.

SEN. STONINGTON said she was under the impression that the \$900,000 from the CDC was in. **Ms. Deveny** said she combined the monies for the biennium. Then, the state grant was about \$450,000, and was currently about \$875,000.

SEN. STONINGTON asked how much of the programs that she had proposed was she able to get going in that two-year period. **Ms. Deveny** said she thought all of the components were up and started with the understanding that it was the beginning and the understanding that as they grew, eventually it would become state

wide. She said, as an example, they did not have community programs going in all of the counties. Many counties were covered, but not every county had programs. There were school programs started in some schools but not all of the school districts. There was a state wide cessation hot line that ran for six or seven months before it was cut down. They never really had a chance to serve all of Montana. Some pilots' projects were going for smokeless tobacco and for programs for women child bearing ages that were just getting started, with the thinking that we would learn from these pilot projects and then when full funding became available in the subsequent biennium, they would be expanded state wide. She said she recognized with the \$3.5 million that there was only part of the minimum amount of the funding that was going to be needed to have a comprehensive program that would show the measured results like those in California, Massachusetts, Oregon and other states.

SEN. STONINGTON asked if a study were done that came up with 9.3 million dollars as a budget and who came up with that figure.

Ms. Deveny said the 9.3 million dollar figure came from CDC, the federal experts on health, particularly from the office of smoking and help on tobacco prevention. She said based on those successes seen in those states who had the programs for a long time, the CDC came up with a formula that showed that Montana needed to spend somewhere between 9.3 million and 17.8 million dollars to have a comparable comprehensive program that would show similar results. The \$9.3 million is the minimum amount.

SEN. STONINGTON said she was on the subcommittee for Human Services and it was the most excruciating experience of her life. She said we were splitting babies and it was awful. She said she had participated in recommending that the program be funded \$3.2 million plus the CDC money annually in the coming biennium. She did that because she saw the state in a time of fiscal crises and she did not see the state getting out of it in any time soon. She said it was nine million dollars for one program for prevention, while cutting medical pharmacy for the mentally ill in half, even if our proposals go through. **SEN. STONINGTON** said it did not compute. She said she would raise the tobacco tax and vote for any tax increase because it was excruciating, and the legislature would decide this session. She felt that they were all on the same team and we were working hard, but she said we forget which half the baby.

SEN. DUANE GRIMES, SD 20, Clancy asked **Mr. Mazurek** about Page 2, Line 17, where he referred to the legal consequences of using the language. **SEN. GRIMES** asked if there were existing law suits, and were they trying to access this back to a settlement fund and

were they claiming they had an illness related to tobacco use.

Mr. Mazurek recalled the case of Robinson vs. Montana. In it was a group of individuals led by a person by the name of Robinson, who was suing the state on the basis that they were Medicaid eligible patients being treated for tobacco related illness. As a condition of receiving Medicaid dollars, as any Medicaid recipient, for any service from the state was required to assign their claim to the State of Montana. If a Medicaid patient was injured in an automobile accident and if Medicaid paid for that person's physical injuries or the medical treatment they received, the state had a sovereign interest. They can go back to the insured driver or the company insuring the driver and recover those dollars back. This was a claim based on a similar theory. These people gave up their individual rights to sue the tobacco company individually and now are coming back and seeking to recover money specifically from the tobacco settlement. It was a case argued and if that ground were broken, anyone who received Medicaid payments for their tobacco related illness was covered by Medicaid and they gave up their right to sue tobacco companies. All of them will be in here to recover their damages.

Mr. Mazurek's concern with the language was that to help Medicaid eligible individuals with illness related to tobacco use was imprecise. He said treating would be one thing, but how was it going to be ranked between mental health, treating tobacco related illness, and prevention. There was not enough money therefore the reason for his concern. He said 15 states had denied this but it had not yet been decided in this state.

SEN. GRIMES asked from a legal stand point to have the language in the code would we face risk. **Mr. Mazurek** said he did not understand why the box was opened to begin with. He said this case would be decided because this did not become effective until it was passed by the voters of 2004 so it should not have an impact on the case other than if the case were won. He thought it ran the risk that it would set it aside. There was potential that it would open the door. He said he pointed it out because it was a concern and it was not treatment and wanted to call the committee's attention to that because he thought it could create a problem.

SEN. ROBERT DEPRATU, SD 40, Whitefish asked if other states were still funding their own. **SEN. ESP** said all of the states mentioned except maybe one, had cut their tobacco prevention programs by 30%, 40%, and 55% in the fiscal year 2002. The legislature had cut prevention funding in most of the states. Also, most of those had increased tobacco taxes. **Mr. Christian** had talked about the \$216 million in tax dollars going for smoking related illnesses, but the Montana Medicaid match for

smoking related illnesses was about \$14 million that levers federal money to put \$52 million in Medicaid on smoking related illnesses. **SEN. ESP** said he thought the other money he spoke of was about free care hospitals and insurance costs.

SEN. DEPRATU asked if those states that had cut back gave any reasons why they were having trouble. Did they feel they were not getting full value because they could not implement everything they were trying to do or what was the problem. **SEN. ESP** thought the situation in which they cut back was similar to ours in that they had to prioritize. They had to ask themselves if they were going to fund prevention or were they going to pay for health care costs for people that could not take care of themselves. **SEN. ESP** thought California pulled out about \$61 million from their prevention programs.

SEN. CROMLEY asked if any of the people asked why the initiative was needed, or if they were asked why an initiative was needed, were there no legal restrictions on the fund and was that why the initiative was needed. **Mr. Mazurek** said he was not sure what he meant. He asked if **SEN. CROMLEY** was talking about whether an initiative was needed then.

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Mr. Mazurek said that after the tobacco settlement was entered in the state, the state embarked on a program to develop a tobacco prevention program. It was funded initially at the level of 3.5 million dollars a year and the state went about developing programs across the state. The program was gutted, and 86% of the money was taken in the last legislature. The initiative was proposed to the people to allocate the CDC recommendation, which had the growing target of prevention because the legislature let the prevention advocates down. This was why the initiative was passed.

SEN. CROMLEY asked if there was no legal restriction, in essence the legislature could have taken the entire amount. **Mr. Mazurek** said that was correct. Each state sued in their own state court, but while all those were pending, five states had filed early had settled individually. At the end, the 44 remaining states entered what was called a master settlement agreement. Under the terms of that, Montana recovered an additional 90 million dollars because of some work that was done with other states. But that money came to the states without any direction how it would be spent. By law, in Montana, it went to the General Fund and with that there were strings, moral strings.

SEN. CROMLEY said he did not see the logic of some opposition in the Senate. He asked what choice was given to the voters. Was it specifically whether to use for tobacco prevention or what was the other alternative. **Mr. Mazurek** said initially the Governor and the legislature through the budget process allocated money for prevention. It was taken away and reduced to \$500,000 a year and the people exercised their right under the initiative to say "We think part of this money ought to be used for tobacco prevention." He said he left out a step: in the year 2000 when the prevention program was beginning, there was a trust that was already set aside. Forty percent of the tobacco settlement dollars were to go into a trust fund, the interest from which funds a wide range of services. The choice the people had on I-146 was to allocate it as it was currently shown in the statute. That was what was proposed and was adopted. It was not an either/or choice.

SEN. CROMLEY asked if the initiative had been voted down where would the money have gone. **Mr. Mazurek** said to the general fund.

SEN. CROMLEY asked if there was any thought given to giving the people a choice regarding tobacco prevention or mental health or other. **Mr. Mazurek** said no and did not think that could be done. It would not be an alternative if it were a yes or no vote. It would give the legislature a multiple choice test. He did not see a mechanism for how all the money would be kept between the different ones.

SEN. SCHMIDT asked **Mr. Mazurek** about Page 1, Line 18. She said he made some comments about supplementation and that this was about matching dollars or something. The language there started on line 17, 18, 19. **Mr. Mazurek** said he was not sure bringing Medicare into funding at the state level was right, but thought maybe it was designed to explain that people who were Medicare eligible, i.e., elderly or Medicaid, which was income eligibility. Medicare age eligibility could qualify for services under those programs. He was not sure what all that did but typically those were federally funded programs but with Medicaid, it was a state match. He said that trying it to bring some sort of funding in to offset medicare expenses seemed unusual because it was all federal.

SEN. SCHMIDT asked what other states had done. **Ms. Deveny** said **SEN. ESP** was correct in that there were budget woes all over the nation. The states were having to look at how they were using their settlement dollars and how much of a tobacco tax needed increasing or changing and exactly how they were putting forth

those prevention programs. She said she was not sure and thought it was true that some programs had taken money out of their prevention programs, but could almost guarantee that it was not because those programs were not doing an adequate job at tobacco prevention.

SEN. SCHMIDT asked if anyone had the current information on the tobacco taxes in the other states. **Ms. Deveny** said she had two different documents, one was a map that shows the cigarette tax rates as of January 1, 2003, and one that showed the current state cigarette excise tax rates and ranking. **EXHIBIT (phs41a21)**

SEN. SCHMIDT asked **Cliff Christian** if **SEN. ESP** was quoting him and that he was shaking his head or nodding. She asked him to clarify what was said. **Mr. Christian** said that **SEN. ESP** got it right the last time. He was talking about the taxpayers.

Mr. Christian said **SEN. ESP** was 100% percent correct and that he was too. It was a \$52 million Medicaid match to take care of the smokers health and we could not take care of the differences between the costs and hospitals and health insurance programs for people who could not take care of themselves. He said the taxpayers ended up picking up the tab and it blew up with the match in the rest of the premiums to about \$216 million and that did not take care of lost productivity and the down sick days.

SEN. SCHMIDT asked **SEN. ESP** if he said something about the advertising not working for tobacco prevention or if she misunderstood what he said. **SEN. ESP** said he did not say that. He said that in the proposal for this biennium on Page 10, it talked about what they wanted to spend this biennium on advertising in these programs. It was \$4.6 million in Montana. To put that into perspective Oregon details what they spent on the ads heard on radio and TV during a year of 2002 about how the legislature only spent 2% on prevention programs. There were five or six different ads that ran state wide and made leverage, one for free media. This was what they spent until October 25 and he thought they had indicated they were going to spend another \$18,000 on ad campaigns and maybe Bozeman in less than a year.

SEN. SCHMIDT asked how he would prioritize the spending between tobacco prevention and the other alternatives added by the new referendum **SEN. ESP** said it was proposed that the legislature would rank it. He said he did not delineate it out but that was probably for the committee to decide. He thought the legislature could finish each category to decide how they would set priorities.

SEN. SCHMIDT asked where that was in the bill. **SEN. ESP** said it was on Page 2, Line 20. It talked about the 32% that was about nine and half million dollars. It could be used for the purposes they had proposed in their initiative and then in addition, for programs to treat adults with severe mental illness that wanted to quit smoking. On Page 3, Line 4 it talked about the 17% and where they proposed to use it for CHIP and the Comprehensive Health Association Plan. He added matching funds for Medicaid and Mental Health Services Plan. The legislature would decide among those four how to allocate the 17%.

SEN. SCHMIDT said on Page 2, Line 26, when she first read it, she thought it was saying that the person had to have a program to help adults with severe mental illness as defined in the statute. She asked if a person had severe mental illness and did not smoke, would not qualify. **SEN. ESP** said that was right.

SEN. BOHLINGER asked if a study had been put together that provided some sort of relationship between the money allocated for prevention and cessation in all 50 states and if that could be compared with the State population, so that a number could show exactly what was the range of money spent per resident of each state in a prevention cessation program, and furthermore, show how the State of Montana might compare with a national average or mid range number. **SEN. ESP** said that data was probably available. He said in Montana as of last year it would look like a half million dollars plus \$900,000 approximately. It would be a \$1.30 per resident of Montana. He did not know if there was any other state lower.

SEN. O'NEIL asked **Ms. Deveny** about her handout. He pointed out where it said from 1997 to 1999 in the Oregon state wide program, their consumption went down 20% and from 1996 to 1999, Arizona adult consumption went down 21%. He asked what Montana's consumption did in that time. **Ms. Deveny** said she did not know that. She had specific data to tell him what Montana's consumption did, but based on what our smoking rates were, they did not change. For example, the number of adults who smoked in Montana had not changed for 10 years. She did not have numbers for actual consumption. **Ms. Deveny** said she could do some research on that if he wanted.

SEN. O'NEIL asked if there was a relationship between smoking and people incarcerated in our prisons? **Mr. Sargent** said there was. He said he precipitated his research on that pre-frontal cortex of the nicotine receptors. There was a correlation between maternal smoking and later incarceration of their off spring and it related to shrinkage of the pre-frontal cortex and its

inability to be social and inability to interact with other members of the community. There was an increase in something called conduct disorder that was essentially misbehaving children who could not be changed. There was an increase in referral to juvenile corrections and eventually as adults there was an increase in the number of those who were incarcerated. A much higher percentage was incarcerated with maternal nicotine exposure during pregnancy.

Informational Testimony: None.

Closing by Sponsor:

SEN. ESP wanted to address a few things that were said. He said that Oregon, Arizona, Massachusetts, Florida, and California were all held up as models and three of the states were rated like we were, having an F in taking care of prevention. Three of those states also got F's. Although the money was all spent, and those states did all the things they were supposed to, they had little success and were still rated an F for how they handled that part of their program. He said he was not asking to overturn what the voters wanted. He saw it was much like the several laws passed last session changed in this session. It was because either they did not work the way we thought they would, we put a word in the wrong place, or we made some policy changes that were no longer wanted. That was done there all the time and it was not because legislators were arrogant or self serving. He said it was because things fixed and adjusted were public policy. This was the same thing, allowing the voters to have a choice. DPHHS could give us a list of all the things spent more than what was spent in 2001 on the health care needs for the people of Montana. They could give \$17 million more in 2002 and \$26 million in 2003. He said he could make a case that if we did not have the 15 million dollars that they are trying to direct here, we would not have done those things in the last biennium. The voters were unaware and were told that it was put in the general fund, which is true and we only spent 2% on prevention, which was true. Nobody spent the money to tell the voters the other side of the story. He said that looking at the sheet of the new proposed program, they did not tell the voters and suspected that it might have made a difference in the outcome of that vote, if they knew that 4.6 million dollars was going to be spent in the biennium on advertising. They did not tell the voters that they were going to create a bureaucracy at the state level and that it would cost roughly 3.5 million dollars for the biennium. They told them they were going to spend it on school-based program and cessation that they do, but the voters may have looked at it different had they known which direction the programs were going to go. **SEN.**

ESP said all his bill did was to try to negotiate a different balance and allow the voters to look at it differently. **SEN. ESP** said it was always his intention to use Medicaid match for people who were either being treated for smoking related illnesses or dying from them. In the section where it allocated the 17%, it clearly said matching funds for federal Medicaid dollars. The drafter said to leave it general up front and specify later.

SEN. ESP said this did not delay. It was the will of the people this biennium. This was for the next biennium. He said in studies from the Office of Public Instruction, a survey was done of several high school kids in Montana in 2001. 3.7% of the high school kids in the State of Montana smoked a pack of cigarettes a day, 80% did not admit to smoking at all, 16% of those kids surveyed had attempted suicide in 2001, 5% percent chewed tobacco at least 10 days a month, 90% did not chew at all. Eighteen percent of the kids surveyed had participated in a community anti-tobacco rally or some sort of program in 2001. About 11% drank at least 10 days a month, about 11% of them had smoked marijuana at least 10 days in the last month. About 5.2 % of them got pregnant or gotten someone else pregnant in the last three months. Almost 7% of them had sex with more than two partners in the last three months. We spend \$110 to \$120 million a year to treat mentally ill and chemical dependency with state money and federal money. That did not count all the private money. There was a public health crisis in Montana and he wanted to send this out to the voters so that there could be some balance.

{Tape: 4; Side: A}

Motion/Vote: **SEN. GRIMES** moved that **SB 449 DO PASS**. Motion carried 6-1 with **SEN. CROMLEY** voting nay.

SEN. GRIMES said the amendment could be put on the floor.

{Tape: 4; Side: B}

ADJOURNMENT

Adjournment: 6:43 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs41aad)